* **HIGH COURT OF DELHI : NEW DELHI**

\+ **WP(C) No. 3999/2003**

Judgment reserved on: August 30, 2007

% Judgment delivered on: September 17, 2007

1. Pintoo Kumar & Ors. ..... Petitioner
Through: Mr. Arun Dhiman for
Mr. S.K. Sinha, Advocate

versus

Union of India & Ors. ..... Respondent
Through: Ms. Maneesha Dhir,
Advocate

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI, J.

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1. The petitioners have filed this petition under Articles 226 and 227 of the Constitution of India to impugn the judgment of the Central Administrative Tribunal, Principal Bench, New Delhi (Tribunal) passed in OA No.3203/2002 dated 21.2.2003 and in RA No.63/2003 on 3.4.2003 whereby the Tribunal has dismissed the aforesaid OA and RA filed by the petitioners.

2. The petitioners had approached the Tribunal since they

apprehended discontinuation of their services on the expiry of the contractual period of their engagement by the respondents, and therefore sought the quashing of the order dated 27.11.2002 whereby it was decided not to give extension to them after expiry of the contractual period on 10.12.2002. The petitioners had also staked a claim for regularisation of their services.

3. A commission of enquiry known as Liberhan Ayodhya Commission of Enquiry was set up on 16.12.92 to enquire into the demolition of the Ram Janam Bhoomi Babri Masjid at Ayodhya. The initial tenure of the Commission was three years, but due to various complications the assignment of the Commission was not completed and its term has been extended from time to time. The petitioners were engaged temporarily on ad hoc basis by the Commission by entering into contracts in the year 1994. The ad hoc appointments of the petitioners were extended from time to time with the extension of the Commission's tenure after giving a break of few days. The petitioners were informed that their services were liable to be terminated without assigning any reasons, and it was also made clear to them that they would not stake any claim for regular absorption. The petitioners were working as Peons/LDCs.

4. It appears that a ban was imposed by the Government on engagement of persons on ad hoc basis from the open market. Consequently, a proposal was made to replace the petitioners with ad

hoc deputationists from offices of the Central/State Governments/Undertakings after the expiry of their extended contractual tenure i.e from 10.12.2002 onwards. Apprehending discontinuation, the petitioners approached the Tribunal and by an order dated 9.12.2002, status quo was ordered to be maintained by the Tribunal.

5. The respondents opposed the claim of the petitioners on the ground that the said commission was handling a time-bound assignment and the commission did not exist as a department of Government for an indefinite period. There were no permanently sanctioned posts against which the petitioners could have been recruited. However, since the assignment could not be completed within the initial tenure of three years, the Commission was being given extension, from time to time. The petitioners had been engaged by the commission temporarily on contractual basis for limited durations and it was made clear to them that their appointments were ad hoc and for a limited period and that they would not claim the right of regularisation.

6. The respondents also stated that the appointment of the petitioners was not made in a regular way through the employment exchange, and that they had been picked up randomly from the open market without laying any stress on registration with the employment exchange. The respondents also relied upon various decisions of the

Supreme Court to contend that even where there are sanctioned posts and recruitment rules, regularisation of casual employees can not be claimed as a matter of right by such employees, who have been granted back door entry, without properly advertising the ports to which they are recruited and without subjecting them to the prescribed selection process. Merely because such persons have been serving for long years, they are not entitled to claim regularisation as a matter of right.

7. The Tribunal by the impugned order rejected the aforesaid OA primarily by relying on the decision of the Supreme Court in ***Delhi Development Horticulture Employees' Union vs. Delhi Administration, Delhi and Ors***., *(1992) 4 SCC 99* wherein the Hon'ble Supreme Court had held that regularisation of ad hoc appointees in temporary or time-bound schemes could not be considered. The appointment of such ad hoc employees was co-terminus with the life of the scheme. Regularisation cannot be a mode of recruitment where the ad-hoc employees have been picked up from the open market without following any rules of appointment.

8. The petitioners thereafter filed the aforesaid review application being RA 63/2003 on the ground that they had the right to continue in service up to the life of the Commission and the Liberhan Commission had been granted extension up to 30th June, 2003 and that the said term was likely to be extended further. As aforesaid, the

Tribunal has rejected the review application as well.

9. Before us, the submission of the petitioners is that petitioners were ad hoc and temporary appointees and not merely contractual appointees. They stake their claim for regularisation on the strength of their past service of about 10 years with the Liberhan Commission.

10. It is also argued by the petitioners that the reason given by the respondents for dis-continuing the services of the petitioners was that the term of the Liberhan Commission had come to an end. This reason was per se incorrect. By placing reliance upon the decision of the Supreme Court in ***Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others*** AIR 1978 Supreme Supreme Court 851 it is argued that the grounds for termination or discontinuation of the engagement of the petitioners cannot be other than those disclosed by the respondents on record, which were that the term of Liberhan Commission had come to an end. The petitioners also sought to place reliance on ***Avas Vikas Sansthan and Anr. vs. Avas Vikas Sansthan Engineers Assn. and others*** 2006 (4) SCC 132, ***Central Welfare Board and others vs. Anjali Bepari (Ms.) and others*** 1996(10) SCC 133 and ***Ajit Singh and others vs. State of Punjab and Anr.*** 1983(2) SCC 217.

11. On the other hand, the Respondent has filed its counter affidavit wherein it is stated that the work of the commission is at an

advance stage. The commission is not replacing or engaging any person on ad-hoc basis nor is the commission making any fresh appointment. The strength of the commission has been reduced from 58 to 27 in view of the reduced work load. This was also the stand of the Respondent before the Tribunal as recorded in the order in the Review application.

12. Learned counsel for the Respondent has also relied upon the decision of the Supreme Court in the following cases:

1. ***U.P. Land Development & Another vs. Amar Singh*** (Drect law on project employees), (2003) 5 SCC 388.

2. ***Jawaharlal Nehru Krishi Vishwa Vidyalaya v. Bal Kishan Snoi***, 1997 5 SCC 86

3. ***State of H.P. v. Nodha Ram***, AIR 1997 SC 1445

4. ***State of U.P. & Ors v. Ajay Kumar***, 1997 4 SCC 88

5. ***Committee of Management v. Sree Kumar Tiwaree***, 1997 4 SCC 388

6. ***Union of India v. J.S. Arora***, CWP No.3149/2001

13. In all these cases, Hon'ble Supreme Court has held that where the casual appointment were granted in respect of a particular scheme or project, the ad-hoc employees working in such scheme have no right to claim regularisation of their services with regular pay scales.

14. Having considered the matter, we find no merit in the

submission of the petitioners and the orders passed by the Tribunal does not call for any interference in the present case. The Hon'ble Supreme Court in its recent constitution bench decision in the case of ***Secretary, State of Karnataka and others vs. Umadevi and others*** (2006) 4 SCC 1 clearly held that persons appointed on ad hoc and casual basis without following a due process of selection have no right to claim regularisation. The Supreme Court in this decision has, inter alia, held:-

> "43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment

was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service.

45. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the Page 1946 constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the

court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. ...The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."

15. Following the decision in **Uma Devi** (supra), the Apex

Court in ***Mahadeo Bhau Khilare (Mane) & Ors. V. State of Maharashtra & Ors.***, JT 2007(6) SCC 562 observed with respect to appointments made by Talathis to assist them in their work that before a person could claim regularisation in the services of the State, he must be in the services of the State. Since, these persons were appointed by Talathis (employees themselves) and no post was in existence against which they could have been recruited nor any recruitment rules thereof were framed, the appointments were not under the State and illegal. Therefore, regularisation could not have been granted to them. In ***Surinder Prasad Tiwari v. U.P. Rajya Krishi Utpadan Mandi Parishad,*** 2006 (7) SCC 684, it was observed that our constitutional framework does not provide room for back door entry in the matter of public employment. Daily wages, ad-hoc employees, probationers, temporary or contractual employees not appointed following the procedure laid down under Article 14, 16 and 309 cannot lay a claim to regular appointment in Government services.

16. Admittedly the appointment of the petitioners was purely ad hoc in nature, their appointments were not in accordance with any recruitment rules and they were picked up at random from the market by the commission, their employment cannot be under the State. The petitioners therefore acquired no right to claim for regularisation. Moreover, the appointment of the petitioners was in

respect of a time-bound assignment/project and, in any case, they could not have claimed regularisation. Merely because the tenure of the Liberhan Commission has been extended further, that could not give a right to the petitioners to claim that their services should be continued till so long as the tenure of the Commission is extended. As aforesaid, the work of the commission is nearly over, and the need to make contractual appointments is also shrinking with passage of time.

17. Reliance placed by the petitioner upon the decision of the Apex Court in ***Ajit Singh (supra)*** is of no avail as the said decision pertains to temporary employees appointed as per Recruitment Rules to existing posts whose services were attempted to be dispensed with after expiry of the probationary period of one year, and they had been given an increment in pursuance thereof,though not yet regularised. The decision in ***Anjali Bepari (supra)*** is also not germane to the present controversy, inasmuch as, in that case the Apex Court was concerned with retrenchment of an employee appointed against a casual vacancy and the Court only passed directions under Article 142 of the Constitution which do not form a precedent, and any case cannot now be followed in view of the decision in ***Uma Devi*** (supra).

18. So far as the argument based on the decision in ***Mohinder Singh Gill (supra)*** is concerned, the same is also

misplaced inasmuch as the reason stated in the order dated 27.11.2002 are based on the order dated 23.7.2001 whereby a ban on ad hoc appointment on ad hoc basis has been imposed, and, it has nothing to do with the tenure of the commission. The decision in ***Avas Vikas (supra)*** also does not extend any help to the petitioners claims. On the contrary the said decision recognises the sovereign right of the State to abolish a post under the state without conferring any right of re-appointment on those holding the abolished post. The petitioners before us were not even holding any permanently sanctioned post, so the question of any impediment to their dis-continuation as ad hoc workers does not arise.

19. Consequently, we find no merit in this petition and dismissed the same, leaving the parties to bear their respective costs.

VIPIN SANGHI, J.

A.K.SIKRI, J.

September 17, 2007
nk/P.K. BABBAR